

1 **JOINTLY SUBMITTED**

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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 JASON A. PEREZ-MORCIGLIO and
10 SEBASTIAN PEREZ-MORCIGLIO,

11 Plaintiffs,

12 vs.

13 LAS VEGAS METROPOLITAN POLICE
14 DEPARTMENT; SHERIFF DOUGLAS
15 GILLESPIE (individually and in his official
16 capacity as Sheriff of the Las Vegas
17 Metropolitan Police Department); LAS
18 VEGAS METROPOLITAN POLICE
19 DEPARTMENT OFFICERS T. SCOTT and S.
20 SCHAIER (in their individual capacities); LAS
21 VEGAS SANDS CORPORATION, a Nevada
22 corporation; VENETIAN CASINO RESORT,
23 LLC, a Nevada limited liability company;
24 Venetian Security Guard ELI CASTRO;
25 Venetian Security Guard LINDA
26 HAGENMAIER; Venetian Security Guard
27 RON HICKS; Venetian Security Guard
28 WILLIAM LOVEGREN; Venetian Security
Guard ANTHONY BRONSON; and Venetian
Security Guard KEVIN NEANOVER

Defendants.

Case No. 2:10-cv-00899-PMP-(RJJ)

STIPULATED PROTECTIVE ORDER

WHEREAS, in the course of this litigation disclosure may be sought of information that a party regards as proprietary, confidential or requiring special protection under Rule 26(c) of the Federal Rules of Civil Procedure (“confidential information”); and

WHEREAS, the parties hereto desire to establish a mechanism governing access to and use of such confidential information in this action. Accordingly,

1 IT IS HEREBY STIPULATED by and between the parties that the following Protective
 2 Order shall govern the designation, access to and use of confidential information produced in this
 3 action.

4 IT IS HEREBY ORDERED that:

5 1. This Order shall apply to all information produced during discovery in this action
 6 that shall be designated by the party or person producing it (“producing party”) as “Confidential.”
 7 (hereinafter, “Designated Information”). Information may only be designated “Confidential” by
 8 parties to this Order.

9 2. “Confidential Information” means any trade secret or other confidential research,
 10 development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), or
 11 any document, transcript or other material containing such information or containing any
 12 information subject to a legally protected right of privacy. All “Confidential” designations must
 13 be based on a good faith and reasonable belief that the material so designated meets this definition.
 14 The following categories of documents and information requested during discovery in this
 15 proceeding provide examples of what may constitute “confidential” information:

- 16 • Information, data, or material (i) which is highly personal and private to a particular
 17 individual, and (ii) has been disclosed to repository entities who have need for such
 information, such as employers;
- 18 • Defendants Las Vegas Sands Corp. and/or Venetian Casino Resort, LLC's security
 19 policies and protocols, training practices, policies, or procedures for security
 20 personnel including, but not limited to, any manuals, guides, videos, or other
 training material, to the extent they constitute material that is appropriately
 21 protected under Fed. R. Civ. P. 26(c)(1)(G);
- 22 • Information, data, or material which has been entrusted by persons not parties to
 this litigation to repository entities upon a promise or legitimate expectation of
 23 privacy—*i.e.*, a legitimate expectation that the information would be treated
 24 confidentially and respectfully and not generally disclosed to others who have no
 legitimate need for the information;
- 25 • Financial records, including tax information;
- 26 • Medical and health care records; and
- 27 • Security documents which, if made public, could pose legitimate security risks
 28 relating to gaming and which are unrelated to the public use of the sidewalk at issue
 in this litigation.

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2 3. This Order does not in and of itself create any privileges or right to non-disclosure
3 should this Court determine materials are not protected. Nor does it change the fact that the
4 burden of proving that information should be protected from disclosure belongs to the party
5 asserting that a document should remain out of the public eye. Further, this Order shall not apply
6 to information that, before disclosure, is properly in the possession or knowledge of the party to
7 whom such disclosure is made, or that is public knowledge. The restrictions contained in this
8 Order shall also not apply to information that is, or after disclosure becomes, public knowledge
9 other than by an act or omission of the party to whom such disclosure is made (“receiving party”)
10 in violation of this Order, or that is legitimately acquired from a source not subject to this Order.
11 The parties also may not designate anything as “Confidential” if it is considered a public record or
12 public information under NRS 239.005 *et seq.*, unless that information falls within an express
13 exception of those statutes.

14 4. If a document or transcript contains information considered “Confidential” by a
15 Party, such document or transcript shall be marked with the legend “CONFIDENTIAL.” Such
16 notation shall be placed on every page of each document so designated.

17 5. Information disclosed at a deposition or other testimony may be designated by a
18 party to this Order as “Confidential” at the time of the testimony or deposition, or within thirty
19 (30) days following receipt of the transcript, and shall be subject to the provisions of this Order.
20 Additional information disclosed during a deposition or other testimony may be designated as
21 “Confidential” by notifying the other party, in writing, within thirty (30) days after receipt of the
22 transcript, of the specific pages and line numbers of the transcript that should also be so
23 designated. Unless otherwise agreed on the record of the deposition or other testimony, all
24 transcripts shall be treated as “Confidential” for a period of ten (10) days after their receipt.

25 6. All Designated Information shall be used only for the purpose of this litigation and
26 not for any other business, proceeding, litigation, or other purpose whatsoever, absent further
27 Order of this Court. Further, such information may not be disclosed to anyone except as provided
28 in this Order. Designated Information shall not become part of the public part of this case absent

1 further Order of this Court.

2 7. As used in this Protective Order, "Trial Counsel" refers exclusively to the attorneys,
3 paralegals, agents and support staff of the attorneys to be used only as needed to aid in this
4 litigation.

5 8. Material designated as "Confidential" that has been obtained during the course of
6 this proceeding may be disclosed or made available only to the Court (filed under seal), to Trial
7 Counsel for any party, and to the persons designated below, subject to the provisions of Paragraphs
8 9, 10 and 11 of this Order:

9 (a) an officer, director, or designated employee of a party deemed necessary by
10 Trial Counsel to aid in the prosecution, defense, or settlement of this action;

11 (b) independent experts or consultants (together with their clerical staff)
12 retained by Trial Counsel to assist in the prosecution, defense, or settlement of this action;

13 (c) court reporters employed in this action;

14 (d) agents of Trial Counsel needed to perform various services such as, for
15 example, copying, drafting of exhibits, and support and management services, including
16 vendors retained by the parties, or by counsel for parties, for the purpose of encoding,
17 loading into a computer and storing and maintaining for information control and retrieval
18 purposes, transcripts of depositions, hearings, trials, pleadings, exhibits marked by a party,
19 or attorneys' work product, all of which may contain material designated Confidential;

20 (e) witnesses in any deposition or other proceeding of this action; and

21 (f) any other persons as to whom the parties in writing agree.

22 9. Any officer, director or designated employee of any party under Paragraph 8(a), or
23 independent experts or consultants (together with their clerical staff) identified under Paragraph
24 8(b) having access to Designated Information shall be given a copy of this Order before being
25 shown such Designated Information, and its provisions shall be explained to them by an attorney.
26 Each person, before having access to the Designated Information, shall agree not to disclose to
27 anyone any Designated Information not exempted by this Order, and to not make use of any such
28 Designated Information other than solely for purpose of this litigation.

1 10. Subject to the rules of evidence, Designated Information may be filed with the court
2 or offered in evidence at hearing or trial of this case. The party filing or offering the Designated
3 Information may move the Court orally or in writing for an order that the Designated Information
4 be received in camera at the hearing or under other conditions to prevent disclosure, the Court will
5 then determine whether the proffered evidence should be treated as confidential, and if so, what
6 protections shall be afforded to such Designated Information at the trial or hearing.

7 11. All Designated Information filed with the Court pursuant to Paragraph 10 of this
8 Order, or any brief, pleading or memorandum purporting to reproduce, paraphrase, or otherwise
9 disclose such Designated Information, shall be filed in a sealed envelope or other appropriately
10 sealed container on which shall be recorded the title and docket number of this action, the word
11 “Confidential” and a statement substantially in the following form:

12 “This envelope or container filed in this case by _____ is not to be
13 opened, nor the contents revealed, except by prior order of the Court.”

14 12. A party shall not be obligated to challenge the propriety of a designation as
15 “Confidential” at the time such designation is made, and a failure to do so shall not preclude a
16 subsequent challenge. In the event that any party to this litigation disagrees at any stage of these
17 proceedings with the designation by the designating party or producing party of any information as
18 “Confidential,” the parties shall first try to resolve such disagreement in good faith on an informal
19 basis, such as by production of redacted copies. If the disagreement cannot be resolved on an
20 informal basis, either party may file a motion with the Court to resolve the dispute including
21 moving the Court for an Order modifying the designated status of such information. In the event
22 of any dispute as to the propriety of a redaction, either party may submit the issue to the Court for
23 resolution.

24 13. Notwithstanding anything to the contrary herein, if a party through inadvertence or
25 mistake produces any Designated Information without marking it with the legend “Confidential,”
26 or designates it with an incorrect level of confidentiality, the producing party may give written
27 notice to the receiving party that the document, information, or testimony contains Designated
28 Information and should be treated as such in accordance with the provisions of this Protective

1 Order. Upon receipt of such notice, and upon receipt of properly marked materials, the receiving
2 party shall return said unmarked or incorrectly marked materials and not retain copies thereof, and
3 must treat such documents, information, or transcripts as Designated Information, and shall
4 cooperate in restoring the confidentiality of such Designated Information. The receiving party
5 shall not be responsible for the disclosure or other distribution of belatedly-labeled Designated
6 Information as to such disclosure or distribution that occurred prior to the receipt of such
7 notification of a claim of confidentiality, and any such disclosure or distribution shall not be
8 deemed to be a waiver or a violation of this Protective Order.

9 14. If information subject to a claim of attorney-client privilege or work-product
10 immunity is inadvertently produced, such production shall in no way prejudice or otherwise
11 constitute a waiver of, or estoppel as to, any such claim. If a party has inadvertently produced
12 information subject to a claim of immunity or privilege, upon request, such information shall be
13 returned promptly and, if a document, all copies of that document shall be destroyed. The party
14 returning such information may move the Court for an Order compelling production of such
15 information upon a good faith basis for challenging the privilege or protection but may not assert,
16 as a basis for compelling production, waiver based on its inadvertent production in the first
17 instance.

18 15. It is not the intention of this Protective Order to fully address discovery objections
19 to produce, answer, or respond on the grounds of attorney-client privilege or work product
20 immunity, nor to preclude any party, including the producing party, from seeking further relief or
21 protective orders from the Court as may be appropriate under the Federal Rules of Civil Procedure.

22 16. This Order shall not abrogate or diminish any contractual, statutory, or other legal
23 obligation or right of any party to this Order, as to any third party, with respect to any Designated
24 Information. The fact that Information is designated "Confidential" under this Order shall not be
25 deemed to be determinative of what a trier of fact may determine to be confidential or proprietary.
26 This Order shall be without prejudice to the right of any party to bring before the Court the
27 question of:

28 (a) whether any particular document, information, or transcript is or is not

1 Designated Information;

2 (b) whether any particular document, information, or transcript is or is not
3 entitled to a greater or lesser degree of protection than provided hereunder; or

4 (c) whether any particular document, information, or transcript is or is not
5 relevant to any issue in this case; provided that in doing so the party complies with the
6 foregoing procedures.

7 17. To protect its own Designated Information, the producing party may ask a non-
8 party to execute a document in the form of Exhibit A.

9 18. Within sixty (60) days following the conclusion of this litigation, all information
10 designated as Designated Information, except such documents or information which incorporate or
11 are incorporated into attorney work product (a single copy of which may be retained in counsel's
12 file), shall, upon request, be returned to the producing party, or disposed of pursuant to the
13 instructions of the producing party.

14 19. The restrictions provided for above shall not terminate upon the conclusion of this
15 lawsuit, but shall continue until further Order of this Court. This Stipulated Protective Order is
16 without prejudice to the right of a party hereto to seek relief from the Court, upon good cause
17 shown, from any of the provisions or restrictions provided herein.

18 20. Nothing in this Agreement shall have any effect upon the Redaction Requirements
19 and Exemptions listed in Fed. R. Civ. Proc. 5.2(a) and 5.2(b).

20 21. A party to this litigation may not withhold production of any document or any
21 information solely on the basis that the producing party believes that it proper to designate it as
22 "Confidential." A party may, under appropriate circumstances, seek greater protection than that
23 afforded by this Stipulated Protective Order for documents or information deserving of same but
24 must do so by securing a stipulation or by filing a motion for a protective order on or before the
25 due date for production. This paragraph shall not apply to documents that are protected by
26 legitimately applicable privileges that have been asserted by the parties in good faith.

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22. The parties shall complete and produce descriptive entries on a Confidentiality Log. Each party shall keep this log cumulatively and re-produce it every time they designate something as "Confidential" so that it is a cumulative record of what that party has marked "Confidential."

ACLU OF NEVADA

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IT IS SO ORDERED


UNITED STATES MAGISTRATE JUDGE

DATE: February 24, 2011

EXHIBIT A

ACKNOWLEDGMENT AND NONDISCLOSURE AGREEMENT

I, _____, declare under penalty of perjury under the laws of the United States that:

1. My address is: _____.
2. My present employer is _____.
3. My present occupation or job description is _____.

I HEREBY CERTIFY AND AGREE that I have read and understand the terms of the Stipulated Protective Order (the "Order") entered in Case No. 2:10-cv-00899-PMP-(RJJ) pending in the United States District Court, District of Nevada (the "Court"). I agree that I will not disclose any documents or information received by me pursuant to the Order, except for purposes directly related to this litigation, as explicitly allowed by said Protective Order, and I agree to be bound by the terms and conditions of this Order unless and until modified by further order of the Court. I hereby consent to the jurisdiction of the Court for purposes of enforcing the Order. I understand that I am to retain all copies of any of the materials I receive which have been labeled as Designated Information in a safe place in a manner consistent with the Order, and that all copies are to remain in my custody until I have completed my assigned or legal duties, whereupon the copies are to be returned or destroyed as specified in the Order. I acknowledge that such return or the subsequent destruction of such materials shall not relieve me from any of the continuing obligations imposed upon me by the Order.

Dated: _____